

98TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
{ 98-404

CONFIRMING THE BOUNDARIES OF THE SOUTHERN UTE INDIAN  
RESERVATION IN THE STATE OF COLORADO AND TO DEFINE  
JURISDICTION WITHIN SUCH RESERVATION

APRIL 18, 1984.—Ordered to be printed

Filed, under authority of the order of the Senate of April 13 (legislative day,  
March 26), 1984

Mr. ANDREWS, from the Select Committee on Indian Affairs,  
submitted the following

REPORT

[To accompany S. 1979]

The Select Committee on Indian Affairs to which was referred the bill (S. 1979) to confirm the boundaries of the Southern Ute Indian Reservation in the State of Colorado and to define jurisdiction within such reservation, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is an amendment in the nature of a substitute.

PURPOSE

The purpose of this legislation is to provide clarification of jurisdiction of the Southern Ute Indian Tribe, the State of Colorado, and its political subdivisions, and the United States over lands and persons within the boundaries of the Southern Ute Indian Reservation. The legislation has the support of the State of Colorado, La Plata and Archuleta County, and the Southern Ute Indian Tribe.

Within the town of Ignacio, which lies within the reservation, the State and town shall have jurisdiction as if jurisdiction had been assumed under Public Law 83-280. Within the remainder of the reservation, the tribal and Federal law shall be applicable to Indians who are members of a federally recognized Indian tribe anywhere within the boundaries of the reservation. These laws, however, will only be applicable to non-Indians when they or their property are actually on

trust land within the reservation. Federal laws governing the sale or possession of alcohol within a reservation and laws governing trading with Indians shall only be applicable on trust lands.

#### BACKGROUND

In the late 1800's, a unified reservation was established in the southwest corner of the State of Colorado for the Ute Indians following their cession of approximately 3.7 million acres of land to the United States. There were subsequent modifications to this reservation, the final modification occurring in 1895. The act of 1895 (28 Stat. 678) divided the Ute Indian Reservation into two parts: the Ute Mountain Ute Reservation was set aside for those tribal members who wished their reservation to remain tribally owned rather than individually allotted; and, the Southern Ute Indian Reservation was set aside for those members—about one half—who desired to have lands allotted to them. This legislation affects only the Southern Ute Indian Reservation.

Following establishment of the Southern Ute Reservation lands were duly allotted out to individual members and the remainder was opened for settlement by non-Indian homesteaders. Not all the surplus land was settled and in 1938 some 200,000 acres of land was returned to tribal ownership.

As a result of the allotments under the act of 1895, the homesteading process, and the order of restoration of 1938, the Southern Ute Indian Reservation is a myriad of Indian trust land, private homesteaded land, and federally owned land. Such patterns of land ownership on other reservations have led to extensive litigation over the past 20 years over a range of jurisdictional and boundary issues. Each case has hinged on extensive historical analysis of the establishment of the reservation and the opening and allotment statutes. Decisions have varied from affirmation of the original reservation boundaries, to findings of diminishment of the reservation boundaries, to findings in some instances—notably Oklahoma—that the reservation was disestablished.

The purpose of this legislation is to avoid such costly litigation with attendant ill feelings generated by such controversy and all-or-nothing results, yet at the same time resolve the current confusion involving jurisdiction of the affected governmental entities. Nothing in this act is intended to affect the authority of the Secretary of Agriculture to manage lands or other interests in lands that are a part of the national forest system situated within this reservation.

#### LEGISLATIVE HISTORY

S. 1979 was introduced in the Senate by Senator Hart on October 20, 1983. A companion bill, H.R. 4276, was introduced in the House of Representatives by Congressman Kogovsek and was referred to the Committee on Interior and Insular Affairs. Hearings on S. 1979 were held by the Select Committee on Indian Affairs on March 15, 1984. On March 16, 1984, the House Committee on Interior and Insular Affairs held hearings on H.R. 4276. S. 1979 was ordered reported out with an amendment by the Select Committee on Indian Affairs as a markup session on April 9, 1984.

## COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTE

The Select Committee on Indian Affairs, at its business session on April 9, 1984, by a unanimous vote of a quorum present, recommends that the Senate pass S. 1979, as amended.

## AMENDMENTS

The committee adopted an amendment in the nature of a substitute.

## SECTION-BY SECTION ANALYSIS

Section 1. This section sets forth a statement of the purpose of the Act.

Section 2. This section defines the term of "Indian trust land". This is important to the section 4 provisions establishing jurisdiction. The definition corresponds with existing law except as it relates to rights-of-way. Under this section, any right-of-way bounded on both sides by Indian trust land shall be deemed Indian trust land; any other right-of-way shall not be deemed Indian trust land.

Section 3. This section confirms the boundaries of the Southern Ute Indian Reservation as they have been customarily recognized by the Department of the Interior, with the inclusion of a small tract of adjoining land on the eastern boundary which was added by Federal patent in 1967. This description includes trust allotted lands, fee patented lands, and lands held in trust for the Southern Ute Indian Tribe. It would include rights-of-way and encompasses the Town of Ignacio, Colo.

It is the intention of this section that all lands within the reservation boundaries be "Indian country" for purposes of Federal, State, or tribal jurisdiction—civil or criminal—over Indians who are members of a federally recognized Indian tribe. To the extent this section affects jurisdiction over Indians, it conforms to existing Federal law governing territorial jurisdiction over Indians that pertain in other Indian reservations. However, under section 4 of this bill, the Federal jurisdictional scheme for non-Indians committing offenses against Indians deviates from standard Federal law.

Section 4(a). This section limits the territorial jurisdiction of the Southern Ute Indian Tribe over persons other than Indians or the property of such persons to Indian trust lands within the boundaries of the reservation. In *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978), it was held that Indian tribal courts do not have inherent criminal jurisdiction to try and to punish non-Indians, and may not assume such jurisdiction unless specifically authorized to do so by Congress. Nothing in this section is intended to alter the effect of the *Oliphant* decision on this or any other Indian tribe. It is the intent of this section that the Southern Ute Indian Tribe shall have the same subject matter jurisdiction over non-Indians as any other Indian tribe, but that this jurisdiction shall be limited to such persons or their property only when on trust lands.

Section 4(b). This section addresses the question of territorial jurisdiction of the United States under title 18 U.S.C. 1152 popularly known as the General Crimes Act. As presently interpreted, this act extends Federal criminal law to any offenses committed by a non-

Indian against the person or property of an Indian anywhere within the boundaries of an Indian reservation, whether the offense be committed on trust property or on fee patent land. Insofar as non-Indians are concerned, section 4(b) will limit that Federal jurisdiction to offenses actually committed on trust lands. This is a significant reduction in Federal jurisdiction within this reservation.

Section 4(c). This section provides that general Federal Indian laws relating to the sale, possession, introduction, or manufacture of alcoholic beverages or to trading with Indians within Indian country shall only apply on Indian trust lands within the Southern Ute Indian Reservation. Title 18 U.S.C. 1154, 1156, and 1161 restricts the introduction or sale of liquor in Indian country, except under certain circumstances. Title 25 U.S.C. 261 and 262 authorizes the Secretary of the Interior to issue licenses and promulgate regulations governing trade with Indian tribes or individual Indians within an Indian reservation. The provisions of these laws are limited to trust lands within the boundaries of the Southern Ute Indian Reservation.

Section 5. This section authorizes the State of Colorado to exercise criminal and civil jurisdiction within the boundaries of the town of Ignacio, Colo., and of any future municipality that may be incorporated under the laws of the State, as if the State had assumed jurisdiction under Public Law 83-280, as amended. This provision would not apply to any village or municipality that might be organized under tribal ordinance.

#### COST AND BUDGETARY CONSIDERATIONS

The cost estimate for S. 1979, as provided by the Congressional Budget Office, is set forth below:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, D.C., April 12, 1984.*

HON. MARK ANDREWS,  
*Chairman, Select Committee on Indian Affairs, U.S. Senate, Hart  
Senate Office Building, Washington, D.C.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 1979, a bill to confirm the boundaries of the Southern Ute Indian Reservation in the State of Colorado and to define jurisdiction within such reservation, as amended and ordered reported by the Senate Select Committee on Indian Affairs, April 9, 1984.

The Congressional Budget Office has determined that enactment of this bill would not result in any significant additional costs to either the Federal Government or State and local governments in the area. The bill would clarify certain boundaries between the reservation and nonreservation lands in the area and would clarify criminal and civil jurisdictions on the Southern Ute Indian Reservation.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

RUDOLPH G. PENNER.



## REGULATORY IMPACT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The committee believes that S. 1979 will have no regulatory or paperwork impact.

## EXECUTIVE COMMUNICATIONS

The committee received the following communication from the Department of the Interior setting forth executive agency recommendations relating to S. 1979:

U.S. DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
*Washington, D.C., April 9, 1984.*

Hon. MARK ANDREWS,  
*Chairman, Select Committee on Indian Affairs,*  
*U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: This responds to your request for our views on S. 1979, a bill "To confirm the boundaries of the Southern Ute Indian Reservation in the State of Colorado and to define jurisdiction within such reservation."

We would support the enactment of S. 1979 if amended as suggested herein.

The purposes of S. 1979, which was introduced on behalf of the Southern Ute Indian Tribe, and local and State authorities, are (1) to resolve uncertainty over the boundaries of the Southern Ute Indian Reservation and the status of unrestricted lands (fee patented lands) therein, and (2) to avoid long and costly litigation over issues dependent on reservation or Indian country status.

## BACKGROUND

In the mid-1800's, the Ute Indian Tribes were located in western Colorado, eastern Utah, and northern New Mexico. On March 2, 1868, the Tribes entered into a treaty with the United States which reserved to the Ute Tribes a large territory in Colorado and ceded other lands to the United States. This new reservation encompassed the western third of the present State of Colorado. However, due to the discovery of minerals in the San Juan Mountains, the reservation was separated into two sections, one to the north and one to the south, by the cession of 37 million acres of land to the United States.

In 1880, the reservation was again modified by an agreement whereby the Uncompahgre and White River Utes were to remove from the northern section of the reservation to the State of Utah. Subsequent to the 1880 agreement, efforts were made to have the Southern Utes remove to southeastern Utah. In 1895, Congress attempted to solve the issue of removal of the Southern Utes from Colorado. The act of February 20, 1895 (28 Stat. 677) provided that a tribally held reservation be created for those members who opposed an allotment plan. This tribally held reservation, which occupies the western half of the south-

ern section, has become known as the Ute Mountain Ute Reservation. The other half of the tribal members received allotments in the eastern half, which is the present day Southern Ute Indian Reservation. The lands not allotted to tribal members in the present day Southern Ute Indian Reservation were opened for homesteading in 1899.

Some of the lands within the Southern Ute Indian Reservation were not settled by homesteaders and on September 14, 1938, a restoration order was approved restoring 200,000 acres of land to the reservation. These lands, together with lands allotted to individual tribal members, are Indian trust lands.

As a result of the allotment of land, the homesteading process, and the 1938 Order of Restoration, the Southern Ute Indian Reservation is a checkerboard of Indian trust land, private homesteaded land, and federally owned land. This has caused uncertainty over the jurisdictional status of the unrestricted fee land, fee patented land, or private homesteaded land within the Southern Ute Indian Reservation. This question has arisen on other Indian reservations and has been resolved by lengthy and costly litigation. In some instances, the courts have held that fee patented land is part of the Indian reservation, but not in other areas.

Recently, the Supreme Court issued a decision in *Solem v. Bartlett*, involving the Cheyenne River Reservation in South Dakota. The court held that the reservation had not been diminished when it was opened to settlement by non-Indians. However, prior to that decision, the status of that reservation had been litigated for over 10 years in a number of cases in the Federal and State courts, with the Federal courts deciding the issue one way and the State courts the other. The Southern Ute Tribe and the State and local governments understandably want to avoid that problem. Without litigation or legislation, the status of the Southern Ute Reservation will remain uncertain and will continue to present a particular problem for law enforcement personnel, because whenever jurisdiction is uncertain, an opportunity exists for criminal defendants to challenge the authority of whatever government is prosecuting them.

#### RECOMMENDATIONS

First, to assure that land held in trust for an individual Indian be included in the definition of "Indian trust land" and to correct what we believe to be a typographical error in the use of the word "and" instead of "or", we suggest that section 2, paragraph (1), be amended to read:

(1) is held by the United States in trust for the benefit of the Southern Ute Indian Tribe or individual Indians, or

Secondly, to avoid any connotation that S. 1979 is intended to affect land titles, we suggest that section 3, on page 2, lines 18 through 20, be amended to read:

SEC. 3. The Southern Ute Indian Reservation in the State of Colorado is confirmed to have the following boundaries:

Also, in section 3, paragraph 4, on page 3, line 21, we suggest that the words "declared to be" be deleted. This would remove any connotation that this legislation would provide additional land to the Southern Ute Indian Reservation.

Third, as written, section 4(a) of S. 1979 may be construed to grant the tribe criminal jurisdiction over non-Indians on Indian trust land. If thus construed, the legislation would override the United States Supreme Court decision of *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978), which held that tribes may not prosecute non-Indians for criminal offenses under tribal law in tribal court. We do not believe this is the bill's intent. In order to clarify this section, we suggest that section 4 be amended to read as follows:

SEC. 4. (a) Such territorial jurisdiction as the Southern Ute Indian Tribe has over persons other than Indians and the property of such persons shall be limited to Indian trust lands within the reservation.

(b) Any person who is not an Indian and the property of any such person shall be subject to the jurisdiction of the United States under section 1152 of title 18, United States Code, only on Indian trust land.

(c) Any law of the United States related to the sale, possession, introduction, or manufacture of alcoholic beverages or to trading with Indians within Indian country, or within Indian reservations, shall apply, with respect to the Southern Ute Indian Reservation, only on Indian trust land.

(d) Nothing in this Act shall create Indian trust land on lands now administered by the Secretary of Agriculture or part of the National Forest System, and nothing shall affect the management and status of any land rights or other interests in land in or affecting the National Forest System, including water rights.

Finally, section 5 of S. 1979 would provide that the State of Colorado will have criminal and civil jurisdiction within the boundaries of the town of Ignacio, Colorado, as well as within other incorporated towns within the reservation. This will provide consistent standards for law enforcement, the absence of which has created tension between the town and its non-Indian residents and the tribe and its members. However, as presently written, there is no requirement that incorporation of a municipality be conducted pursuant to the laws of the State of Colorado in order for this section to apply. Therefore, the section could be misconstrued to include municipalities incorporated pursuant to tribal law.

Also, section 5 makes reference to the Act of April 11, 1968 (82 Stat. 79). That act amended an earlier act, the act of August 15, 1953 (67 Stat. 588), which provided for State assumption of civil and criminal jurisdiction over Indian reservations. The original act and its amendment should be cited in this legislation as they were in the act of September 18, 1978 (92 Stat. 712) and the act of April 3, 1980 (94 Stat. 317), concerning the Pascua Yaquis and the Utah Paiutes.

To address our concerns with section 5 of S. 1979, we suggest that it be amended to read:

SEC. 5. The State of Colorado shall exercise criminal and civil jurisdiction within the boundaries of the town of Ignacio, Colorado, and any other municipality which may be incorporated under the laws of Colorado within the Southern Ute Indian Reservation, as if such State had assumed jurisdiction pursuant to the Act of August 15, 1953 (67 Stat. 588), as amended by the Act of April 11, 1968 (82 Stat. 79).

## CONCLUSION

The reservation boundaries that would be confirmed by S. 1979 conform to the administrative area within which the Bureau of Indian Affairs exercises its service responsibilities. The boundaries of the San Juan National Forest extend into the area. However, S. 1979 would not affect existing private or public ownership of land including National Forest System lands. S. 1979 would not add to, nor subtract from, any lands owned by the Southern Ute Indian Tribe or its members.

S. 1979 would present no additional administrative cost to the Federal Government from the standpoint of current land management. However, should the current uncertainty about jurisdiction go unresolved, we believe the various parties including the Federal Government may find themselves involved in costly litigation. Therefore, we support enactment of S. 1979, if amended as suggested above.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

KENNETH L. SMITH,  
*Assistant Secretary.*

## CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the committee states that enactment of S. 1979 will not change any existing law.

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